

2011

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

GAMING MACHINE (CLUB GOVERNANCE) AMENDMENT BILL 2011

EXPLANATORY STATEMENT

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INTRODUCTION

Gambling Policy Objectives

The policy objectives of the ACT's gaming laws typically revolve around consumer protection issues, provide the relevant regulatory powers and authorities, and in some cases, provide a revenue source for Government.

In general terms, the gaming laws aim to:

- suppress illegal gambling by offering a legal equivalent;
- allay community concerns about the conduct of gambling activity by providing a regulated alternative;
- minimise gambling harms;
- ensure, through licensing and audit processes, the probity of the persons and the integrity of the operations involved in the provision gambling products; and
- provide economic benefits to the wider community through Government imposed regulatory fees and taxation.

In December 1999 the *Gambling and Racing Control Act 1999* (the Control Act) established the Gambling and Racing Commission (the Commission) and prescribed how the Commission was to perform its functions. The Commission was tasked, in a way that best promotes the public interest, to:

- promote consumer protection; and
- minimise the possibility of criminal or unethical activity; and
- reduce the risks and costs, to the community and to the individuals concerned, of problem gambling.

ACT Gambling Legislation

Legitimate gambling, including the operation of gaming machines, a casino, TAB, race and sports bookmakers and various lottery activities, is closely regulated in the ACT under separate legislation specific to each gambling activity.

The purpose of regulatory control is to ensure that:

- gaming operations are conducted fairly, free from criminal influence; and
- the possible harmful effects of problem gambling are minimised.

The Gaming Machine Act 2004 (GMA)

The *Gaming Machine Act 2004* (GMA) is the primary piece of legislation governing the operation of gaming machines in the ACT. The GMA includes provisions on the eligibility of both corporations and individuals to hold a gaming machine licence, licence conditions, the day to day operation of gaming machines, reporting and administrative requirements, harm minimisation measures and compulsory community contributions by licensees. It also includes requirements concerning the governance of clubs because good club governance practices, transparency and accountability are key to ensuring consumers and the community are informed and protected.

Background to the amendments - Review of the governance provisions of the GMA

The Control Act provides for the Commission as part of its functions to review the ACT's legislation and policies related to gaming and racing. In March 2010 the Minister for Gaming and Racing, Andrew Barr MLA, requested the Commission to undertake a review of the club governance provisions in the GMA.

In conducting reviews of legislation and policies the Commission must, in accordance with section 8 of the *Gambling and Racing Control Act 1999*, engage in community consultation. In order to fulfil this requirement and ensure an open and transparent process the Commission released in May 2010 an Issues Paper to commence the first stage of the review's public consultation. The paper was forwarded directly to stakeholders, advertised in *The Canberra Times* and made available on the Commission's website. The Commission also participated in an industry seminar on the review facilitated by ClubsACT.

At the conclusion of this first six week stage of public consultation the Commission had received nine submissions from industry and one from an associated organisation. Following its analysis of submissions and based on its research of the issues, the Commission developed a draft report that outlined its draft conclusions and recommendations.

The second four week stage of public consultation occurred in August/September 2010 and involved releasing the Commission's draft report (including recommendations) for comment. Two submissions were received from this process – one from industry and the other from an associated organisation.

The submissions received during both stages of consultation were considered by the Commission in finalising its conclusions and recommendations which were then provided to the Minister in a Review Report. The recommendations were adopted by Government and formed the basis for the drafting of the *Gaming Machine (Club Governance) Amendment Bill 2011* (the Bill).

Overview of the Bill

The Bill amends the GMA to improve the transparency and accountability of the club industry. These improvements are achieved through adjustments and additions to the governance related provisions of the GMA.

The key amendments are:

- a new requirement that club directors must act in good faith in the best interests of the club and for a proper purpose;
- new provisions protecting club directors from being removed from a club's board by an associated organisation;
- a minimum percentage of club directors must be elected by voting members;
- new disclosure requirements for clubs; and
- new powers for the Commission to ensure club constitutions are consistent with the gaming laws.

The Bill also includes a number of minor and technical amendments.

Offence Provisions

No new offence provisions are created by this Bill.

Human Rights Issues

Section 6 of the Human Rights Act provides that only individuals have human rights. The Bill creates obligations on gaming machine licence holders which are all registered entities.

Financial Implications

There are minimal financial implications for industry or government resulting from the Bill. The Gambling and Racing Commission will absorb any costs associated with the introduction and implementation of the new legislation, for any increased regulatory costs and for providing advice to the community and affected stakeholders. While there are some additional reporting requirements on clubs these are relatively minor, are consistent with existing obligations and should not present a significant burden on clubs.

NOTES ON SPECIFIC PROVISIONS

Part 1 Preliminary

1. Name of the Act

This clause provides that the name of the Act is the *Gaming Machine (Club Governance) Amendment Act 2011*

2. Commencement

This clause provides that the amending Act commences on 1 July 2011, with the exception of some clauses. Clauses 9, 10, 11, 21, 26 and 28 will commence on 1 July 2012. The reasons for delaying the commencement of these particular amendments are discussed in the notes for those provisions.

A commencement date of 1 July 2011 for the majority of amendments will provide sufficient time for the Commission to advise stakeholders of the changes made by the Bill and allow stakeholders to make or commence any changes necessary. It will also provide a convenient commencement for the start of a new financial year.

3. Legislation Amended

This clause identifies the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004* as the legislation amended by this Act.

Part 2 Gaming Machine Act 2004

4. Grounds for refusing initial licence application by club

Section 14(1)(a)

Section 14 provides the grounds by which the Commission may refuse to issue a gaming machine licence.

Clause 4 provides that replacement section 14(1)(a) broadens the existing provision to allow the Commission to refuse to issue a licence where the supply of *any* good or service is related to the level of gaming machine performance. Previously it was limited to payments for the rental or lease of the club's premises.

This broadened scope is necessary to prevent goods or service providers, such as food or beverage suppliers or gaming machine manufacturers, from becoming defacto gaming machine operators which could occur if payments to them were related to the level of gaming machine performance. An example of an acceptable method of payment would be for a fixed or specified fee that was not related in any way to the level of gaming machine activity.

Section 14(1)(a) has also been amended to remove the concept of payments being 'unreasonable'. The concept of a reasonable cost in this context has proved difficult to assess objectively. It is also considered unnecessary given the existing obligations in section 55 concerning the appropriate use of club funds more broadly.

5. Eligibility of clubs and other organisations

Section 21 prescribes a number of requirements for a corporation to be considered an 'eligible person' and therefore eligible to hold a gaming machine licence. If a corporation is granted a licence by the Commission and then ceases to be an eligible person under section 21, the Commission may then take disciplinary action under part 4 of the *Gaming Machine Act 2004* including possible suspension or cancellation of the licence.

New section 21(1)(f)

Clause 5 inserts new section 21(1)(f) to the prescribed requirements for a corporation to be considered an eligible person. It requires that in order to be considered an eligible person a corporation must not be, in the opinion of an auditor, not able to pay off its debts as and when they become due and payable. This amendment provides for the Commission to refuse a licence when the corporation applying is, in the opinion of an auditor, not able to pay all of its debts as and when they become due and payable. Where an existing licensee is in the opinion of an auditor in this position, the Commission may take disciplinary action which may include the suspension or cancellation of the licence.

A corporation that is not able to pay its debts when they become due and payable is not suitable to be a gaming machine licensee due to the high risk that winnings, especially large ones, will not be honoured. It also increases the risk of other unethical or unlawful conduct such as unreasonably encouraging gambling activity, providing credit to gamblers or allowing underage or excluded persons to gamble. Additionally, the directors of a corporation that continued to trade while insolvent may be in breach of section 588G of the *Corporations Act 2001* (Cth) and this would be indicative of a significant breakdown in the corporation's governance arrangements. In light of these risks it is appropriate for a corporation that is not able to pay its debts when they become due and payable, whether it is already licensed or a licence applicant, to be considered ineligible to be a gaming machine licensee.

New section 21(1)(g)

This amendment follows from new section 21(1)(f) and adds to the prescribed requirements for a corporation to be considered an eligible person. It requires that in order to be considered an eligible person a corporation must not be the subject of an auditor's adverse opinion or disclaimer of opinion, within the meaning of Auditing Standards ASA 705.

In relation to an adverse opinion, the Auditing Standards ASA 705 states that:

The auditor shall express an adverse opinion when the auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are both material and pervasive to the financial report.¹

¹ Auditing and Assurance Standards Board (2009) Auditing Standard ASA 705 - Modifications to the Opinion in the Independent Auditor's Report, p.10

http://www.auasb.gov.au/admin/file/content102/c3/ASA_705_27-10-09.pdf

In relation to a disclaimer of opinion, the Auditing Standards ASA 705 states that:

The auditor shall disclaim an opinion when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial report of undetected misstatements, if any, could be both material and pervasive.

The auditor shall disclaim an opinion when, in extremely rare circumstances involving multiple uncertainties, the auditor concludes that, notwithstanding having obtained sufficient appropriate audit evidence regarding each of the individual uncertainties, it is not possible to form an opinion on the financial report due to the potential interaction of the uncertainties and their possible cumulative effect on the financial report.²

Therefore, an adverse or disclaimer of opinion indicates that material and pervasive misstatements exist in the corporation's financial reports or that insufficient audit evidence or multiple uncertainties prevent the auditor from forming an opinion. In both these circumstances significant risks exist where the corporation seeks to be, or already is, a gaming machine licensee. These circumstances are indicative of serious financial and governance issues within an organisation. The risks and concerns of unethical or unlawful conduct are outlined in the comments above in relation to new section 21(1)(f).

As a prescribed requirement for a corporation to be an eligible person, this new paragraph therefore provides for the Commission to consider current audit opinions when assessing whether a corporation or current licensee is an eligible person. This enables the Commission to either refuse to issue a licence or take disciplinary action (such as a suspension or cancellation) when these circumstances apply to an organisation.

6. New section 21(4)

Clause 6 inserts a new section that defines the terms 'AUASB' and 'Auditing Standard ASA 705' used in section 21.

7. Conditions about inequitable benefits

Section 53 makes it a condition of a club's licence that nobody should derive a benefit from the club other than the types of benefits prescribed as permissible in this section.

Section 53(4)(a)

Clause 7 amends the existing section 53(4)(a) to clarify that a person may only take a benefit if they are offered the benefit in the course of acting on behalf of the club and the benefit is directly related to the person's normal role and duties.

Previously this section could be interpreted as allowing a person within the club to receive benefits completely unrelated to their role, as long as they were acting on behalf of the club. For example, it was possible that a member of a club's cleaning staff could represent the club at an international conference or event at the club's expense which would not be appropriate. By linking the concept of acting on behalf of the club with the requirement that the benefit relates to their role, it ensures that

² Auditing and Assurance Standards Board (2009) Auditing Standard ASA 705 - Modifications to the Opinion in the Independent Auditor's Report, p.11

http://www.auasb.gov.au/admin/file/content102/c3/ASA_705_27-10-09.pdf

club funds are not used inappropriately such as providing a favour to a particular individual.

The transparency of the arrangements are further enhanced by new section 54(e) which requires publication of details of the benefit in the club's annual report (see relevant section below).

8. New section 53(4)(b)(iii)

Clause 8 inserts new section 53(4)(b)(iii) which allows a person to receive a benefit from a third party as long as it is in the form of an expense relating to their duties and it has been formally approved by the club's management committee or board.

This clause explicitly provides for a benefit to be received from a third party but ensures transparency by providing that it is related to the recipient's duties and has been approved by the club's management committee or board. In addition, new section 54(c) requires details to be published in a club's annual report (see relevant section below).

As an example, an audio visual equipment supplier may pay the expenses of a club entertainment manager to attend an interstate seminar on the use and benefits of installing a new projector system. Provided that the interstate seminar is directly related to the entertainment manager's duties and the arrangement is authorised by a resolution of the club's board then this would be permissible.

9. New sections 53A and 53B

New section 53A—Condition about club's constitution – consistency with gaming laws

Clause 9 inserts a new section that requires, as a condition of a gaming machine licence, that a club's constitution is consistent with the gaming laws.

Where a club's constitution explicitly permits activities or actions that are contrary to gaming laws, it inadvertently encourages the club or an individual to breach those gaming laws. This section helps prevent licensees, club members and staff from breaching a gaming law by requiring that club constitutions are consistent with gaming laws. It is considered that a legislative breach is always better prevented as opposed to having the regulator react after the event.

New section 53B – Condition about club's constitution—amendment if inconsistent with gaming laws

Section 53B(1) imposes a new condition on licensees and requires that a club's constitution provides for amendments to be made to the constitution in accordance with a direction from the Commission (under section 148B) without an election of voting members. (The Commission's powers under section 148B to direct a club to amend its constitution are limited to those circumstances where provisions in the constitution are inconsistent with a gaming law.)

This amendment recognises that organising a general meeting and securing a quorum or generating member interest in what could just be a technical change can be very difficult, costly and time consuming. On the basis that any changes to a club's constitution that are directed by the Commission only relate to removing an

inconsistency with a gaming law, it is considered appropriate that this provision requires such amendments to be made without the need to seek the concurrence of members. It is expected that such amendments would be approved by a club's managing committee or board as the controlling authority of a club.

Section 53B(2) provides that section 53B is a corporations legislation displacement provision for the purposes of section 5G of the Corporations Act. This means that a club incorporated under the Corporations Act may amend its constitution to include a provision to amend the constitution in the circumstances described in section 53B(1) despite being inconsistent with the Corporations legislation.

This clause introducing new sections 53A and 53B will commence on 1 July 2012. The delayed commencement will allow clubs time to amend their constitutions to include the provision required by section 53B(1).

10. Annual report of clubs Section 54(a)

Section 54 outlines the annual reporting requirements for licensees. These requirements are a condition of holding a gaming machine licence.

Clause 10 replaces the existing section 54(a) by expanding the reporting requirements relating to the arrangements entered into by the club and its influential persons. (Influential persons include executive officers, an influential owner or others with like influence.)

The new section requires that the position (but not the name) of the influential person, the purpose of the arrangement or consultancy and the total monetary value of the arrangement or consultancy for the year be reported in the club's annual report.

It also requires that contractual arrangements or consultancies with the licensee over the prescribed amount (currently \$49,999) must be reported but should now include the purpose of the arrangement or consultancy and the total amount for the relevant financial year.

These new reporting requirements will assist members to scrutinise the major financial decisions made by the licensee in relation to the remuneration of influential persons. This improved transparency and accountability will help ensure that payments and remuneration of influential persons are appropriate and reasonable.

The new reporting requirements will commence on 1 July 2012. This is to ensure that clubs are fully informed about what they will need to disclose to their members prior to engaging in arrangements captured by the new reporting requirements.

11. New section 54(c)

Clause 11 inserts section 54(c) which provides for some additional annual reporting requirements in relation to the receipt of benefits. If a person receives a benefit such as those permitted by section 53(4) then the club must report the person's position, a description of the benefit, the purpose of the benefit, the monetary value of the benefit and the name of the person paying the expense. For example, if a club director was paid by a service provider to go on a trip interstate to look at another club's operations then the details of this trip would now need to be reported.

As with the amended section 54(a), this amendment is intended to improve transparency and decrease the likelihood of improper benefits being taken. It is appropriate for this kind of information to be reported and subject to the scrutiny of members. As with clause 10 this amendment will also commence on 1 July 2012. This is to ensure that clubs are fully informed about what they will need to disclose to their members prior to making decisions about benefits that will be captured by the new reporting requirements.

12. Other conditions of club licences – Section 55(d)

Clause 12 omits existing section 55(d) due to the difficulties of enforcement that the term ‘reasonable’ gives rise to in this context and because it is considered that the other provisions in this section achieve what this section was intended to achieve, namely the appropriate use of club funds.

13. New section 144A – Definitions—pt 9

Clause 13 inserts definitions of ‘associated organisation declaration’ and ‘warning notice’, terms which are used in other amendments.

14. Section 147 heading

This clause substitutes the existing heading with ‘Associated organisations—declaration’.

15. Section 147(2)

This clause provides for the inclusion of the defined term ‘associated organisation declaration’ into the existing provision.

16. New section 147(2)(ba)

Section 147 prescribes the matters that the Commission must be satisfied of in making a declaration that an entity is an associated organisation for a club.

Clause 16 inserts a new paragraph that adds to those matters. It requires that the Commission may not make a declaration for an entity unless it is satisfied that the entity does not have the power to remove a director from the club’s board.

In a situation where an associated organisation could remove a director from a club board, it is conceivable that a director may experience real or perceived pressure to reach a decision that favours the associated organisation rather than the club. This type of situation is not in the interests of directors, members or the community. This provision assists directors to meet their responsibilities under new section 148A and Corporations Law (it should be noted that where a director is underperforming they may be removed and replaced by a member’s resolution under the Corporations Act.)

17. Section 147(2)(f)

This clause provides a technical correction and relates to the Commission’s declaration in relation to associated organisations. The amendment omits the term ‘approval’ and substitutes the term with ‘declaration’ for consistency.

18. New sections 147A to 147D

Clause 18 inserts four new sections relevant to existing section 147.

New section 147A – Associated organisation declaration–condition

The new section 147A imposes a number of conditions on associated organisations.

Section 147A(a)

This section requires that an associated organisation continually meet each requirement for the declaration as outlined in section 147(2). The requirements under section 147(2) effectively act as criteria to assess whether entities are appropriate to be an associated organisation to a club. Given the significant role that associated organisations can have in the governance of a club it is appropriate that they should continue to meet the requirements for the initial declaration. Failing to do so would indicate that the entity is no longer appropriate to be an associated organisation.

Section 147A(b)

This section requires that an associated organisation not do anything that would, if the Commission were considering whether to declare the entity as an associated organisation for a club, cause the Commission to refuse to make the declaration. This provision requires that an associated organisation not undertake any activity or practice that would result in the Commission refusing to declare the entity as an associated organisation. For example, if the directors of an associated organisation were convicted of fraud or the entity had a history of regulatory non-compliance.

Section 147A(c)

This section requires that associated organisations not attempt to remove a director from the club's board. This provision clearly prohibits an associated organisation from removing a director, or taking action that attempts to remove a director, from a club board.

It complements section 147(2)(ba) which prevents the Commission from making a declaration if an entity has the power to remove a director. Section 147A(c) ensures that regardless of whether a formal power to remove directors actually exists, associated organisations must not do anything to attempt to remove a director of a club.

This amendment aims to preserve a club director's ability to come to decisions that are in the interests of the club free of undue pressure from an associated organisation.

The notes accompanying this provision highlights the powers of the Commission under sections 22 and 23 of the Control Act to enforce this provision on the basis that it involves the enforcement of a gaming law.

New Section 147B Associated organisation–warning notice

This new section provides for the Commission to give an associated organisation a warning notice and an opportunity to respond in circumstances where a legislative breach has occurred.

Section 147B(1)

This section allows the Commission to issue a warning notice to an associated organisation if the Commission is satisfied that it has stopped meeting a requirement for the associated organisation declaration.

Section 147B(2)

This section prescribes what the Commission must state in the warning notice which includes the timeframe for a written response by the associated organisation to the notice. This provision ensures procedural fairness is available to the associated organisation.

New section 147C Associated organisation declaration—suspension or repeal

Section 147C(1) provides that this section (147C) applies if (a) the associated organisation has been given a warning notice and (b) after considering any responses given within the period stated in the warning notice, the Commission is satisfied that the associated organisation has stopped meeting a requirement for the associated organisation declaration applying to the organisation.

Section 147C(2) provides that the Commission may suspend or repeal the declaration. These are reviewable decisions (refer to clause 24 of this Bill).

Section 147C(3) provides that if the Commission suspends or repeals the declaration, the suspension or repeal takes effect (a) when the entity received written notice of the suspension or repeal or (b) on a later stated date.

Section 147C(4) provides that if the Commission suspends the declaration, the suspension ends (a) on a date stated in the written notice of the suspension or (b) when an event stated in the notice happens.

Associated organisations play a significant role in a club's governance, including their ability to appoint the majority of directors to a club's board. A failure to continually meet the requirements for a declaration indicates that it is not appropriate for the associated organisation to continue in this role. The Commission requires the power to suspend or repeal a declaration to protect clubs from associated organisations that, because they no longer meet the requirements for a declaration, are unlikely to be a benefit to the club.

New section 147D club elections—election of board directors

This new section requires that if a club holds an election of directors then the club must ensure that the voting members of the club elect 25% of the directors.

Section 147D(1) provides that section 147D applies if a club holds an election of directors to the club's board. As this section applies when a club holds an election, this new requirement will effectively commence at the next election of club directors.

Section 147D(2) provides that the club must ensure that at least 25% of the directors are elected by the voting members of the club. This new minimum percentage of elected directors enables voting members to be guaranteed representation on their club's board, where previously it was possible for all directors to be appointed by a club's associated organisation.

The provision allows members a guaranteed voice on their board of directors – an important governance requirement for clubs.

19. Section 148 heading

Clause 19 provides for the replacement of the previous heading of ‘Keeping records relating to club elections’ for section 148 with ‘Club elections–record-keeping’.

20. New section 148A

Club directors–acting in good faith

This new section requires club directors to exercise their powers and discharge their duties in the best interests of the club and for a proper purpose. This ensures that regardless of any other roles or responsibilities a director may have, when performing their role as a director of a club they must act with the *club’s* best interests foremost in mind. This is an important safeguard against club directors being pressured or forced to act in a way that may be in the best interests of another entity (such as an associated organisation or other corporation) or another person but which may not necessarily be in the best interests of the club.

This is effectively a mirror provision to section 181(1) of the Commonwealth’s *Corporations Act 2001* (Corporations Act) and has been included in the GMA for two reasons. The first is to ensure that *all* club directors are required to act in this manner. The GMA does not require all clubs to be incorporated under the Corporations Act and smaller clubs are generally only incorporated associations. This new section therefore ensures that this key provision in the Corporations Act applies to all club directors.

The second reason for its inclusion in the GMA is that enables the Commission, as the local regulatory authority, to take timely action (including encouraging remedial action) if a director does not comply with these requirements.

21. New section 148B

Club constitution–consistency with gaming laws

This new section requires the Commission to direct a club to amend their constitution where it is considered on reasonable grounds to be inconsistent with the gaming laws.

Section 148B(1) outlines that this power only applies if the Commission believes on reasonable grounds that a club’s constitution contains provisions that are inconsistent with a gaming law or where provisions grant a power which if exercised would be inconsistent with a gaming law.

Section 148B(2) requires the Commission to direct the club to remove the inconsistency in their constitution. This direction must be in writing. It is important to note that while the Commission must direct a club to amend their constitution in these circumstances, the Commission is not empowered to require a particular form of words or to prescribe the exact manner in which the constitution should be amended. The decision to issue a direction is a reviewable decision (see clause 26 of this Bill).

Section 148B(3) provides that a club must act in accordance with the Commission's direction within the timeframe stated in the direction. It is acknowledged that club boards will need to have time to seek advice about an appropriate amendment and to convene a board meeting to formally approve the change to their constitution (see new section 53B). The time these actions take will vary from club to club and depend on the time of year and for this reason there is no fixed or default time in which they must comply. The Commission must consider what is a reasonable timeframe for the club and state this in the direction.

Section 148B(4) clarifies that the term 'club' in this section refers to clubs that have a current gaming machine licence as opposed to any other kind of social or recreational club, or clubs more generally.

Consistent with the delayed commencement of clause 9 (which introduces new sections 53A and 53B) this clause will commence on 1 July 2012.

22. Approval of community contributions

New section 164(3), definition of *contribution*, paragraph (b)(xvi)

Section 164 provides for the Commission to approve certain kinds of contributions by clubs as eligible community contributions. The section describes the effect the contributions must have and excludes a number of payments from being considered community contributions.

Clause 22 inserts section 164(3)(b)(xvi) which will enable licensees to claim the new mandatory contributions to the Problem Gambling Assistance Fund (as provided for in the *Gaming Machine (Problem Gambling Assistance) Amendment Act 2010*) as community contributions. It also clarifies that payments of taxes such as the GST cannot be included as community contributions.

The level of required community contributions has been increased proportionally by amendments to section 169 (see clause 23 of this Bill below) to take account of the inclusion of payments into the Problem Gambling Assistance Fund as community contributions.

23. Required community contributions

Section 169(2)(a) and (3)(b)

The existing section 169(2)(a) provides for the required level of mandatory community contributions to be 7% of a club's Net Gaming Machine Revenue and section 169(3)(b) restates the required level in the context of providing for circumstances where that level may cause a club serious hardship were it to be required to contribute that amount.

Clause 23 substitutes the required level of 7% with 8% to ensure that payments to the Problem Gambling Assistance Fund (as provided for in new section 164(3)(b)(xvi) above) are in addition to the existing level of required community contributions.

The allowance of contributions to the Problem Gambling Assistance Fund, while a mandatory levy under section 163A of the GMA, recognises the contribution made by gaming machine licensees to problem gambling support services. This continues

current arrangements where such contributions are eligible claims. However, by increasing the minimum contribution requirement it ensures that other community contributions are not accordingly reduced by licensees.

24. Problem gambling community contributions

New section 171A(1A)

Section 171A allows licensees to claim \$4 for every \$3 of problem gambling assistance community contributions as an incentive to make contributions in this area. Consistent with ensuring that payments to the Problem Gambling Assistance Fund are over and above the existing level of mandatory community contributions, new section 171A(1A) excludes payments to the Problem Gambling Assistance Fund from this incentive scheme. This means that while a licensee may include their payments to the Problem Gambling Assistance Fund as part of their problem gambling community contributions, they cannot claim the payments at the value of \$4 for every \$3 as they would other problem gambling community contributions.

25. Reviewable decisions

Schedule 1, new items 34A and 34B

Clause 25 inserts two of the three new decisions introduced by this Bill to the schedule of reviewable decisions in Schedule 1 of the GMA. The decisions numbered 34A and 34B are, respectively, if the Commission suspends or repeals the declaration that an entity is an associated organisation for a club. In this case the associated organisation may seek to have the decision reviewed by the ACT Civil and Administrative Tribunal (ACAT).

26. Reviewable decisions

Schedule 1, new item 34C

The decision numbered 34C relates to a decision by the Commission to issue a direction to a club to amend its constitution where it conflicts with a gaming law. The club may seek to have the decision reviewed by ACAT. Consistent with the delayed commencements of clause 9 (which introduces new sections 53A and 53B) and clause 21 (introducing section 148B) this clause will commence on 1 July 2012.

27. Dictionary, new definitions

Clause 27 inserts three new definitions to the dictionary which relate to new terms in this Bill.

Part 3 Gaming Machine Regulation 2004

28. Section 73 heading

This clause provides for a minor consequential amendment to the *Gaming Machine Regulation 2004*, namely a change to the heading of section 73. The new heading has an amended reference to the section of the Act – now section 54(aa) rather than section 54(a)(ii). Consistent with the delayed commencement of clauses 10 and 11 this clause will commence on 1 July 2012.